

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.5636 of 2020**

M/s Cobra Industrial Security Forces (India) Ltd., A Company duly registered under the provisions of the Companies Act, 1956, having its registered office at Tiwary Mansion, Kamla Nagar, Near Akash Trading, Kokar, P.S.- Sadar, Ranchi, Jharkhand and one of its Local Office at Samvedan, Ravikar Lane, Gujral Path, Keshari Nagar, P.S.- Shastrinagar, Patna, through its Director Sunil Kumar Tiwary, Aged about 49 Yrs, Male, Son of Late Capt. S.N. Tiwari, P.S.- Sadar, Ranchi, Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principle Secretary, Agriculture Department, Government of Bihar, Patna.
2. Bihar Rajya Beej Nigam Ltd. 6th Floor, Pant Bhawan, Jawaharlal Nehru Marg, Patna-01, through Managing Director.
3. The Managing Director Bihar Rajya Beej Nigam Ltd. 6th Floor, Pant Bhawan, Jawaharlal Nehru Marg, Patna-01, through Managing Director.
4. The Secretary Bihar Rajya Beej Nigam Ltd., 6th Floor, Pant Bhawan, Jawaharlal Nehru Marg, Patna-01.
5. The Public Relation Officer Bihar Rajya Beej Nigam Ltd., 6th Floor, Pant Bhawan, Jawaharlal Nehru Marg, Patna-01.

... .. Respondent/s

**Appearance :**

|                      |   |                                                          |
|----------------------|---|----------------------------------------------------------|
| For the Petitioner/s | : | Mr. Sanjay Singh, Sr. Adv.<br>Mr. Nirbhay Prashant, Adv. |
| For the BRBNL        | : | Mr. Sourendra Pandey, Adv.                               |
| For the State        | : | Md. Nadim Seraj, GP-5<br>Mr. Shailesh Kumar, Adv.        |

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**  
**CAV JUDGMENT**

**Date : 13-07-2020**

The present writ petition has been filed by the writ petitioner, seeking the following reliefs:-

*“(a) For quashing and setting aside the order contained in letter no. 767 dated 13.4.2020 (Annexure-11) issued by the Managing Director, Bihar Rajya Beej*



*Nigam Ltd. (Respondent No. 3), whereby and whereunder, the said authority in a quite illegal, arbitrary and malafide manner, without there being jurisdiction and in complete violation of principles of natural justice and that too during the pandemic period of 'lockdown' passed the said order by which the petitioner company has been blacklisted for a period of three years, from participating in Tenders floated by the respondent authorities and also seized the bank guarantee of Rs. 16,34,500/- which has been deposited as performance security along with EMD of Rs. 2,00,000/-.*

*(b). For restraining the Respondent Authorities to invoke/en-cash the Bank Guarantee of Rs. 16,34,500/- seized by the Respondent No. 1 vide the aforesaid impugned order dated 13.4.2020 and for a further direction*



*upon the same to forthwith release the same."*

2. The brief facts of the case are that the petitioner company is a premier security agency, which provides security and other allied services to various organizations including Central Government, State Governments, PSU, Private Organizations etc. On 24.6.2019, the respondent authorities had invited a tender bearing Tender No. 01/2019-202019-20/BRBN for selection of an agency for providing manpower support having result orientation with potential to deliver at various levels of their placement. The petitioner had then participated in the bid and was selected as L1, being the most eligible and suitable company for the aforesaid tender work and accordingly, vide letter no. 1460 dated 18.09.2019, the work order was issued to the petitioner firm and it was directed to deposit performance security amount at the rate of 5% and execute an agreement with the Respondent No. 1, whereafter, the agreement was also



executed and came into force on 25.10.2019 in between the Respondent No. 2 and the petitioner company. The petitioner had then worked according to the scope of work described in the agreement in question and had provided a list of eligible candidates to the respondent authorities on 04.02.2020. It is the further case of the petitioner that all of a sudden, the respondent authorities had served a notice vide letter no. 286 dated 07.02.2020 along with CD of two audio clips upon the petitioner company and it was directed to file clarification within 24 hours as to why the petitioner company should not be blacklisted and FIR be not registered for the allegation being leveled against the petitioner company of taking bribe from the applicants for posting in the Bihar Rajya Beej Nigam Ltd. The petitioner company had then filed a show cause reply on 08.02.2020, categorically denying the allegations leveled against the petitioner company and inter alia stating therein that the company had no role to play in the selection of the candidates on the post



in question rather it was the screening committee headed by the Managing Director of the Bihar Rajya Beej Nigam Ltd., who is responsible for screening of professionals for deployment on the required posts. Thereafter, there was no response from the respondents, however subsequently, another show cause notice dated 24.02.2020 was sent to the petitioner company and now, a new allegation was leveled against the petitioner company of having suppressed the fact that it had been debarred for the years 2017-18 and 2018-19 by the Commissioner Office, Patna, consequently, a false statement had been made by the petitioner company, hence, the petitioner company was directed to file a reply as to why legal action be not taken against the petitioner company, whereupon the petitioner company had filed a show cause reply dated 25.02.2020 inter alia stating therein that the petitioner company was never debarred by the office of the Commissioner, Patna Division, Patna or by the Bihar State Building Corporation Ltd. Patna and



during the said period in question, the petitioner company has been allotted tender work by the Bihar State Building Construction Corporation Ltd., Patna vide letter dated 09.11.2019. Nonetheless, the Respondent No. 1 had passed an order dated 13.04.2020 whereby and whereunder the petitioner company has been blacklisted for a period of three years and has been debarred from participating in any tender floated by the respondent authorities as well as the bank guarantee totaling to a sum of Rs. 16,34,500/- and the deposit on the head of performance security along with earnest money deposit of Rs. 2,00,000/- has been forfeited.

3. The learned senior counsel for the petitioner, Sri Sanjay Singh, has submitted that the respondent authorities have passed the impugned order dated 13.04.2020 in a most arbitrary and illegal manner in a panoramic situation prevailing in the State on account of COVID-19 pandemic, just with a view to tarnish the image of the petitioner company. It is submitted that as far as



the first show cause notice dated 7.2.2020 is concerned, after a reply was filed by the petitioner company on 8.2.2020, the allegations made by the Respondent, Bihar Rajya Beej Nigam Ltd. had fizzled out and no adverse order came to be passed by the respondent, Bihar Rajya Beej Nigam Ltd. However, on account of bias prevailing against the petitioner company, the respondent authorities had again come up with a show cause notice dated 24.2.2020 and now, a fresh allegation was made against the petitioner company that it has been debarred from taking part in any notice inviting tender for a period of two years i.e. 2017-18 and 2018-19 by the office of the Commissioner, Patna Division, Patna, however, the petitioner company had suppressed the said fact and filed a false affidavit with a view to somehow obtain the contract in question. It is submitted that the allegations leveled by the respondents in the said show cause notice dated 24.2.2020 is also false inasmuch as at the relevant time when the tender in question was floated i.e.



in the month of June, 2019, the aforesaid order of debarment, issued by the office of the Commissioner, Patna Division, Patna, had already lost its force in the month of April, 2019 itself and on the said relevant date, there was no order of blacklisting in existence. It is thus submitted that the premises on which the impugned order dated 13.4.2020 has been passed, is incorrect, hence, the order dated 13.4.2020 is fit to be set aside. It is therefore, the submission of the learned senior counsel for the petitioner that admittedly, as per paragraph no. 3 of the impugned order dated 13.4.2020, the allegation leveled vide show cause dated 7.2.2020 regarding the officials of the petitioner company taking bribe could not be established and as far as the second issue raised in the second show cause notice dated 24.2.2020 is concerned, the same has also not been proved to be correct inasmuch as on the relevant date, the order of debarment issued by the office of the Commissioner, Patna Division, Patna had also lost its effect, as such, the two premises on which the



impugned order dated 13.4.2020 has been passed are non-existent, hence, the impugned order dated 13.4.2020 is illegal and fit to be set aside, being based on imaginary facts. Lastly, it is submitted that the respondents have brought on record of the case, by way of their counter affidavit, an inquiry report dated 13.2.2020 to contend that an internal committee was constituted by the Bihar Rajya Beej Nigam Ltd. for inquiring into the allegations leveled against the petitioner company and the committee has also found that there has been large-scale illegality on the part of the petitioner company by way of taking bribe money from job aspirants as also suppressing relevant facts in the affidavit to the effect that it had been blacklisted by a Government of Bihar undertaking previously, hence, there is no infirmity in the impugned order dated 13.4.2020, to which the learned senior counsel for the petitioner has submitted that a copy of the inquiry report dated 13.2.2020 has never been given to the petitioner, thus the



petitioner has been precluded from adverting to the same and put forth his defence, hence, the respondent authorities have prejudged the issue inasmuch as prior to issuance of the show cause notice dated 24.2.2020, an inquiry had already been held by an internal committee of the Respondent, Bihar Rajya Beej Nigam Ltd. and a decision had also been taken to blacklist the petitioner company and terminate the contract in question, thus, the respondent - Bihar Rajya Beej Nigam Ltd. had merely engaged in observing a formality by issuing a show cause notice dated 24.2.2020, resulting in rendering the entire decision making process of the respondent, Bihar Rajya Beej Nigam Ltd. faulty and full of errors as also depicting bias and malafide intent on the part of the respondent - Bihar Rajya Beej Nigam Ltd.. Thus, it is submitted that the impugned order dated 13.4.2020 is fit to be set aside.

4. Per contra, the learned counsel for the Bihar Rajya Beej Nigam Ltd., Sri Pandey, has submitted that serious allegations have been leveled against



the petitioner company regarding its officials taking bribe for the purposes of posting of the applicants in the Bihar Rajya Beej Nigam Ltd. It is further submitted that the petitioner company has also suppressed the fact that it had been debarred previously from participating in any NIT in the State of Bihar. It is further submitted that in fact, the bank guarantee furnished by the petitioner company is also forged and an FIR has also been lodged. Lastly, it is submitted that from a bare perusal of the inquiry report dated 13.2.2020 and the impugned order dated 13.4.2020, it is amply evident that the petitioner company had engaged in illegal acts and misdeeds for the purposes of somehow obtaining the contract in question, hence, the impugned order dated 13.4.2020 has rightly been passed, blacklisting the petitioner for three years as also forfeiting the bank guarantee and earnest money deposit in question.

5. At this juncture, the learned counsel for the Bihar Rajya Beej Nigam Ltd., has also referred to a judgment rendered in the case of State of Bihar &



Ors. vs. M/s Baba Hans Construction Pvt. Ltd., reported in **2018(4) PLJR 688** to contend that since the dispute in question between the parties are contractual in nature and both the parties were / are governed by the agreement / contract entered into / executed between the parties, which specifically contains an arbitration clause with respect to disputes arising out of the contract between the parties, as such any dispute between the parties including the action of the department in rescinding the contract are required to be considered and adjudicated by the Arbitral Tribunal. In this connection, the learned counsel for the Respondents, Bihar Rajya Beej Nigam Ltd. has also referred to Clause 35 of the agreement in question dated 25.10.2019, which also postulates that in case of any sort of dispute, the Managing Director, Bihar Rajya Beej Nigam Ltd., Patna shall be the Arbitrator. Thus, it is submitted that the present writ petition is not maintainable. The learned counsel for the State has supported the stand taken by the learned counsel appearing for



the Bihar Rajya Beej Nigam Ltd., as aforesaid.

6. The learned senior counsel for the petitioner, in reply, has submitted that as far as the blacklisting of the petitioner firm vide the impugned order dated 13.4.2020 is concerned, the present petition is fully maintainable in view of the fact that the principles of natural justice have not been complied with while blacklisting the petitioner company and moreover, the petitioner company has been illegally blacklisted without there being any material on record to show any sort of complicity of the petitioner firm in the allegations leveled against it.

7. I have heard the learned counsel for the parties and perused the materials on record. First of all, this Court would like to adjudicate upon the issue as to whether the present writ petition qua the order of blacklisting is maintainable or not. In this regard, this Court finds that it is a well-settled law that a blacklisting order does not pertain to any contract, however, the same involves civil consequences and casts an aspersion on the



person / firm blacklisted. In this connection, it would be apt to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Erusian Equipment & Chemicals Ltd. vs. State of West Bengal & Another***, reported in **1975 (1) SCC 70**, paragraphs no. 1, 10, 15, 20, 21 and 22 whereof are reproduced herein below:-

***"1.*** *The two writ petitions and the civil appeal raise the question as to whether a person who is put on the blacklist by the State Government is entitled to a notice to be heard before the name is put on the blacklist.*

***10.*** *In writ petitions counsel for the State submitted that the petitioner was not entitled to any order of mandamus inasmuch as the sales were contractual. It was said that the petitioner was not entitled as of right to acceptance of tender. It was also said that the attitude of the State*



*was not discriminatory against the petitioner but that the State wanted that the pending proceedings against the petitioner for alleged violation of Foreign Exchange Regulation Act should be adjudicated first and thereafter the State would deal with the petitioner.*

**15.** *The blacklisting order does not pertain to any particular contract. The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are “instruments of coercion”.*

**20.** *Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains.*



*The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.*

**21.** *With regard to the case of the petitioners, it is made clear that the authorities will give an opportunity to the petitioners to represent their case and the authorities will hear the petitioners as to whether their name should be put on the blacklist or not. This is made clear that the decision on this question will not have any effect on the proceedings pending in Calcutta High Court where the petitioner has challenged the adjudication proceedings under the*



*Foreign Exchange Regulations Act.*

*Any decision of the authorities on the blacklisting will have no effect on the correctness of any of the facts involved in those proceedings.*

**22.** *For these reasons, the petitioners succeed.”*

8. It would also be relevant to refer to a judgment rendered by the Hon’ble Apex Court in the case of ***Raghunath Thakur vs. State of Bihar & Ors.***, reported in **1989 (1) SCC 229**, paragraph no. 4 whereof is reproduced herein below:-

**“4.** *Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. Insofar as the contention that there is no requirement specifically of giving any notice is concerned, the*



*respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order. In that view of the matter, the last portion of the order insofar as it directs blacklisting of the appellant in respect of future contracts, cannot be sustained in law. In the premises, that portion of the order directing that the appellant be*



*placed in the blacklist in respect of future contracts under the Collector is set aside. So far as the cancellation of the bid of the appellant is concerned, that is not affected. This order will, however, not prevent the State Government or the appropriate authorities from taking any future steps for blacklisting the appellant if the Government is so entitled to do in accordance with law i.e. after giving the appellant due notice and an opportunity of making representation. After hearing the appellant, the State Government will be at liberty to pass any order in accordance with law indicating the reasons therefor. We, however, make it quite clear that we are not expressing any opinion on the correctness of otherwise of the allegations made against the appellant. The appeal is thus*



*disposed of.”*

9. Another judgment being referred to by this Court is the one rendered by the Hon'ble Apex Court in the case of ***M/s Patel Engineering Ltd. vs. Union of India & Anr.***, reported in **(2012) 11 SCC 257**, paragraphs no. 13, 14 and 25 whereof are reproduced herein below:-

*“13. The concept of “blacklisting” is explained by this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B. [(1975) 1 SCC 70] as under: (SCC p. 75, para 20)*

*“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains.”*

**14.** *The nature of the authority of the State to blacklist the persons was considered by this Court in the abovementioned case and took note*



*of the constitutional provision (Article 298), which authorises both the Union of India and the States to make contracts for any purpose and to carry on any trade or business. It also authorises the acquisition, holding and disposal of property. This Court also took note of the fact that the right to make a contract includes the right not to make a contract. By definition, the said right is inherent in every person capable of entering into a contract. However, such a right either to enter or not to enter into a contract with any person is subject to a constitutional obligation to obey the command of Article 14. Though nobody has any right to compel the State to enter into a contract, everybody has a right to be treated equally when the State seeks to establish contractual*



*relationships. The effect of excluding a person from entering into a contractual relationship with the State would be to deprive such person to be treated equally with those, who are also engaged in similar activity.*

**25.** *The bid document is not a statutory instrument. Therefore, the rules of interpretation, which are applicable to the interpretation of statutes and statutory instruments, are not applicable to the bid document. Therefore, in our opinion, the failure to mention blacklisting to be one of the probable actions that could be taken against the delinquent bidder does not, by itself, disable the second respondent from blacklisting a delinquent bidder, if it is otherwise justified. Such power is inherent in every person legally*



*capable of entering into contracts.”*

10. Yet another judgment which this Court would like to refer to is the one reported in **(2014) 9 SCC 105 (Gorkha Security Services vs. Govt. (NCT of Delhi) & Ors.)**, paragraph nos. 16, 20, 22, 26, 27, 29, 30 and 34 whereof are reproduced herein below:-

*“16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as “civil death” of a person who is*



*foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.*

**20.** *Thus, there is no dispute about the requirement of serving show-cause notice. We may also hasten to add that once the show-cause notice is given and opportunity to reply to the show-cause notice is afforded, it is not even necessary to give an oral hearing. The High Court has rightly repudiated the appellant's attempt in finding foul with the impugned order on this ground. Such a contention was specifically repelled in Patel Engg. [Patel Engg. Ltd. v. Union of India, (2012) 11 SCC 257 : (2013) 1*



*SCC (Civ) 445]*

**22.** *The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:*

*(i) The material/grounds to be stated which according to the department necessitates an*



*action;*

*(ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.*

*We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.*

**26.** *In the present case, it is obvious that action is taken as provided in sub-clause (ii). Under this clause, as is clear from the reading thereof, the Department had a right to cancel the contract and withhold the agreement. That has been done. The Department has also a right to get*



*the job which was to be carried out by the defaulting contractor, to be carried out from other contractor(s). In such an event, the Department also has a right to recover the difference from the defaulting contractor. This clause, no doubt, gives further right to the Department to blacklist the contractor for a period of 4 years and also forfeit his earnest money/security deposit, if so required. It is thus apparent that this sub-clause provides for various actions which can be taken and penalties which can be imposed by the Department. In such a situation which action the Department proposes to take, need to be specifically stated in the show-cause notice. It becomes all the more important when the action of blacklisting and/or forfeiture of*



*earnest money/security deposit is to be taken, as the clause stipulates that such an action can be taken, if so warranted. The words “if so warranted”, thus, assume great significance. It would show that it is not necessary for the Department to resort to penalty of blacklisting or forfeiture of earnest money/security deposit in all cases, even if there is such a power. It is left to the Department to inflict any such penalty or not depending upon as to whether circumstances in a particular case warrant such a penalty. There has to be due application of mind by the authority competent to impose the penalty, on these aspects. Therefore, merely because of the reason that Clause 27 empowers the Department to impose such a penalty, would not*



*mean that this specific penalty can be imposed, without putting the defaulting contractor to notice to this effect.*

**27.** *We are, therefore, of the opinion that it was incumbent on the part of the Department to state in the show-cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. However, we may also add that even if it is not mentioned specifically but from the reading of the show-cause notice, it can be clearly inferred that such an action was proposed, that would fulfil this requirement. In the present case, however, reading of the show-cause notice does not suggest that noticee could find out that such an*



*action could also be taken. We say so for the reasons that are recorded hereinafter.*

**29.** *No doubt, rules of natural justice are not embodied rules nor can they be lifted to the position of fundamental rights. However, their aim is to secure justice and to prevent miscarriage of justice. It is now well-established proposition of law that unless a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice, in exercise of power prejudicially affecting another must be in conformity with the rules of natural justice.*

**30.** *We are conscious of the following words of wisdom expressed by this Court through the pen of Krishna Iyer, J. in Board of Mining*



*Examination v. Ramjee [(1977) 2  
SCC 256 : 1977 SCC (L&S) 226] :  
(SCC pp. 258 & 262, paras 1, 13 &  
14)*

*“1. If the jurisprudence of remedies were understood and applied from the perspective of social efficaciousness, the problem raised in this appeal would not have ended the erroneous way it did in the High Court. Judges must never forget that every law has a social purpose and engineering process without appreciating which justice to the law cannot be done. Here, the socio-legal situation we are faced with is a colliery, an explosive, an accident, luckily not lethal, caused by violation*



*of a regulation and consequential cancellation of the certificate of the delinquent shot-firer, eventually quashed by the High Court, for processual solecisms, by a writ of certiorari.*

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*13. ... Natural justice is no unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be*



*complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt—that is the conscience of the matter.*

*14. ... we cannot look at law in the abstract or natural justice as a mere artefact. Nor can we fit into a rigid mould the concept of reasonable opportunity.”*

**34.** *For the aforesaid reasons, we are of the view that the impugned judgment [Gorakha Security Services v. Govt. (NCT of Delhi),*



*(2013) 205 DLT 309] of the High Court does not decide the issue in the correct perspective. The impugned Order dated 11-9-2013 passed by the respondents blacklisting the appellant without giving the appellant notice thereto, is contrary to the principles of natural justice as it was not specifically proposed and, therefore, there was no show-cause notice given to this effect before taking action of blacklisting against the appellant. We, therefore, set aside and quash the impugned action of blacklisting the appellant. The appeals are allowed to this extent. However, we make it clear that it would be open to the respondents to take any action in this behalf after complying with the necessary procedural formalities*



*delineated above. No costs.”*

11. At this juncture, it would also be relevant to refer to a judgment rendered by the Hon’ble Apex Court in the case of ***M/s Kulja Industries Ltd. vs. Chief General Manager, W.T.Proj. BSNL & Ors.***, reported in ***(2014) 14 SCC 731***, paragraphs no. 17, 18, 19 and 20 whereof are reproduced herein below:-

*“17. That apart, the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because “blacklisting” simply signifies a business decision by which the party affected by the breach decides not to enter into*



*any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant*



*thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ court.*

**18.** *The legal position on the subject is settled by a long line of decisions rendered by this Court starting with Erusian Equipment & Chemicals Ltd. v. State of W.B. [(1975) 1 SCC 70] where this Court declared that blacklisting has the effect of preventing a person from entering into lawful relationship with the Government for purposes of gains and that the authority passing any such order was required to give a fair hearing before passing an order blacklisting a certain entity. This Court observed: (SCC p. 75, para 20)*

*“20. Blacklisting has the effect*



*of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”*

*Subsequent decisions of this Court in Southern Painters v. Fertilizers & Chemicals Travancore Ltd. [1994 Supp (2) SCC 699 : AIR 1994 SC 1277] ; Patel*



*Engg. Ltd. v. Union of India [(2012) 11 SCC 257 : (2013) 1 SCC (Civ) 445] ; B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. [(2006) 11 SCC 548] ; Joseph Vilangandan v. Executive Engineer (PWD) [(1978) 3 SCC 36] among others have followed the ratio of that decision and applied the principle of audi alteram partem to the process that may eventually culminate in the blacklisting of a contractor.*

**19.** *Even the second facet of the scrutiny which the blacklisting order must suffer is no longer res integra. The decisions of this Court in Radhakrishna Agarwal v. State of Bihar [(1977) 3 SCC 457 : (1977) 3*



*SCR 249] ; E.P. Royappa v. State of T.N. [(1974) 4 SCC 3 : 1974 SCC (L&S) 165] ; Maneka Gandhi v. Union of India [(1978) 1 SCC 248] ; Ajay Hasia v. Khalid Mujib Sehravardi [(1981) 1 SCC 722 : 1981 SCC (L&S) 258] ; Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489] and Dwarkadas Marfatia and Sons v. Port of Bombay [(1989) 3 SCC 293] have ruled against arbitrariness and discrimination in every matter that is subject to judicial review before a writ court exercising powers under Article 226 or Article 32 of the Constitution.*

**20.** *It is also well settled that even though the right of the writ petitioner is in the nature of a contractual right, the manner, the method and the motive behind the*



*decision of the authority whether or not to enter into a contract is subject to judicial review on the touchstone of fairness, relevance, natural justice, non-discrimination, equality and proportionality. All these considerations that go to determine whether the action is sustainable in law have been sanctified by judicial pronouncements of this Court and are of seminal importance in a system that is committed to the rule of law. We do not consider it necessary to burden this judgment by a copious reference to the decisions on the subject. A reference to the following passage from the decision of this Court in Mahabir Auto Stores v. Indian Oil Corpn. [(1990) 3 SCC 752] should, in our view, suffice: (SCC pp. 760-*



61, para 12)

*“12. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in Radhakrishna Agarwal v. State of Bihar [(1977) 3 SCC 457 : (1977) 3 SCR 249] . ... In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and*



*relevant grounds of public interest.*

*Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. ... It appears to us that rule of reason and rule against arbitrariness and*



*discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.”*

12. Lastly, this Court would also rely on a judgment rendered by the Hon’ble Apex Court in the case of **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.,**



reported in **(1998) 8 SCC 1**, paragraph nos. 14 and 15 are reproduced herein below:-

**“14.** *The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.*

**15.** *Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an*



*effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”*

13. Considering the law settled by the Hon’ble



Apex Court in a catena of decision, as aforesaid, since order of blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for the purposes of gains and entails creation of a disability, this by itself indicates that the relevant authority is obliged to be objectively satisfied and moreover, fundamentals of fair play require that the principles of natural justice should be complied with and the person concerned should be given opportunity to represent his case before he is put on the blacklist. Furthermore, the facet of the scrutiny which the blacklisting order must suffer is no longer res integra and the Hon'ble Apex Court has repeatedly ruled against arbitrariness and discrimination in every matter that is subject to judicial review before a writ court exercising powers under Article 226 or Article 32 of the Constitution of India, thus, undoubtedly, even considering the judgment relied upon by the learned counsel for the Respondents, Bihar Rajya



Beej Nigal Ltd., rendered in the case of **M/s Baba Hans Construction Pvt. Ltd.** (Supra), though a writ petition might not be maintainable as far as termination of contract and forfeiture of bank guarantee etc. is concerned and the same would be subject matter of arbitral proceedings in terms of the arbitration clause provided for in the agreement, nonetheless, the order of blacklisting would definitely be amenable to judicial review by a writ court, hence, this Court holds that the present writ petition qua the order of blacklisting dated 13.04.2020 is fully maintainable. Now coming back to the facts and circumstances of the case, it would suffice to state that as far as the first show cause notice dated 07.02.2020 is concerned, an allegation has been leveled upon the employees of the petitioner company of taking bribe from the applicants for the purposes of providing them appointment in the respondent-Bihar Rajya Beej Nigam Ltd., however, after the petitioner had submitted his reply dated 8.2.2020, it appears that no further action was taken on the



said allegation leveled against the petitioner company and in fact a bare perusal of the impugned order dated 13.4.2020 would also show that no evidence could be collected by the respondent-Bihar Rajya Beej Nigam Ltd., as far as the said allegation is concerned, hence, this Court is of the view that the petitioner company cannot be blacklisted qua the allegation pertaining to the officials of the petitioner having taken bribe, especially in absence of cogent and concrete evidence. As far as the second show cause dated 24.2.2020 is concerned, again, this Court finds that a false, inconsistent and frivolous allegation has been leveled against the petitioner company of not disclosing the factum of it having been blacklisted for the period 2017-18 and 2018-19, resulting in it suppressing the previous blacklisting order and furthermore denying the said fact in its reply filed to the show cause notices dated 24.2.2020 on 25.2.2020. In this regard, it is noted that admittedly, the previous blacklisting order had lost its force and effect in the month of April,



2019 itself whereas the notice inviting tender of the present case was issued in the month of June, 2019, hence, this Court does not find any relevancy of disclosure / non-disclosure of the previous blacklisting orders while submitting bid documents relating to the current NIT in question. Thus the order of blacklisting dated 13.4.2020 is unsustainable in the eyes of Law and fit to be set-aside.

14. Nonetheless, since the respondents have fervidly relied on an inquiry report dated 13.2.2020, to contend that the Bihar Rajya Beej Nigam Ltd. had constituted an internal committee for inquiring into the allegations leveled against the petitioner company and the committee has found that large-scale illegality has been committed by the employees of the writ petitioner by way of demanding money from job aspirants for their placement in the Bihar Rajya Beej Nigam Ltd. and moreover, the petitioner company has also suppressed the factum of it being blacklisted on a previous occasion in the affidavit filed by it



while filling up the bid documents, it would suffice to state here that the said inquiry report dated 13.2.2020 has never been supplied to the petitioner firm, thus the petitioner firm has been precluded from being afforded an opportunity of rebutting the same and putting forth its defense, resulting in non-compliance of the principles of natural justice, hence, on this ground as well, the present writ petition is liable to succeed, hence, the order of blacklisting dated 13.4.2020 is quashed, being bad both on facts as also in Law, however, with liberty to the Respondents, Bihar Rajya Beej Nigam Ltd., to issue a fresh show cause notice to the petitioner company, annexing the aforesaid inquiry report dated 13.2.2020, seeking response of the petitioner company and then taking appropriate decision in accordance with law.

15. It is needless to state that the other disputes regarding termination of contract, forfeiture of bank guarantees etc. are contractual disputes in between the parties, which are governed by the



agreement entered into between the parties and since the agreement in question in the present case contains an arbitration clause with respect to resolution of the disputes arising out of the contract in between the parties, the petitioner company is at liberty to invoke the arbitration clause.

16. The writ petition stands allowed to the aforesaid extent.

**(Mohit Kumar Shah, J)**

Ajay/-

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